

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LORIE L. MARTIN)	
Claimant)	
VS.)	
)	Docket No. 202,502
SPIKES COMMODITIES, INC.)	
Respondent)	
AND)	
)	
FARMLAND MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier requested review of the preliminary hearing Order dated December 12, 1997, and the Supplemental Order dated December 22, 1997, both entered by Administrative Law Judge Kenneth S. Johnson.

ISSUES

The Administrative Law Judge ordered the respondent and its insurance carrier to provide claimant additional medical treatment, including surgery, for a knee injury which she sustained while undergoing physical therapy for an earlier work-related back injury. Because claimant allegedly re-injured her knee in a nonwork-related fall in October 1996 after allegedly being released from active medical treatment, respondent and its insurance carrier contend they should not be responsible for the surgery and other medical treatment which claimant's physician now recommends.

On the other hand, claimant contends the medical treatment should be provided by respondent and its insurance carrier because the surgery was initially considered before the October 1996 accident. Alternatively, claimant argues the October 1996 accident was a natural and probable consequence of the compensable knee injury.

The only issue before the Appeals Board on this review is whether the respondent and its insurance carrier should be responsible for the medical treatment to claimant's knee which is presently recommended.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds as follows:

(1) As the issue is whether claimant's present need for medical treatment is due to a work-related accident or some other incident, the Appeals Board has jurisdiction to decide that preliminary hearing issue. Respondent and its insurance carrier contend claimant needs medical treatment because of a subsequent accident. That defense goes to the issue whether claimant has sustained personal injury by accident arising out of and in the course of her employment with the respondent.

(2) Claimant originally injured her right knee in May 1995 while in physical therapy for a work-related back injury. Claimant obtained medical treatment from Bradley W. Bruner, M.D., who performed knee surgery in November 1995.

In October 1996, claimant re-injured the right knee while shopping at Builders Square in Wichita, Kansas. The incident occurred when claimant was entering the store and the wind lifted a rug which then caught claimant's leg and cane causing her to twist her right knee and fall. Claimant returned to Dr. Bruner for treatment after that incident.

Dr. Bruner now recommends claimant undergo a second knee surgery, an osteochondral transplant, which he initially considered in April 1996 but decided against. However, Dr. Bruner now believes claimant is a proper candidate for the procedure because he is now more experienced with it. As indicated by the doctor's notes dated July 7, 1997, two other factors the doctor considered in determining that claimant is now a proper candidate is her present use of medications and that she has attempted to work.

The Appeals Board finds that claimant needed the osteochondral transplant before she twisted her knee at Builders Square. Therefore, respondent should be responsible for that procedure and any other medical treatment or therapy reasonably associated with it.

The Appeals Board also finds the accident at Builders Square was a separate and distinct accident and that respondent and its insurance carrier are not responsible for the medical expense associated with that accident. Should Dr. Bruner provide treatment for injuries sustained in the incident at Builders Square, the parties may present evidence at the time of final award to separate such treatment and expenses from that associated with the transplant procedure.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order and Supplemental Order dated December 12, 1997, and December 22, 1997, respectively, entered by Administrative Law Judge Kenneth S. Johnson should be, and hereby are, affirmed to the extent they conform with the above.

IT IS SO ORDERED.

Dated this ____ day of March 1998.

BOARD MEMBER

c: Lawrence M. Gurney, Wichita, KS
 Jeffrey E. King, Salina, KS
 Kenneth S. Johnson, Administrative Law Judge
 Philip S. Harness, Director